

**Whirlpool**  
**Leasing**  
Services, Inc.

5151 Indian Trail, Industrial Parkway, Suite 230 P.O. Box 1527  
Norcross, GA 30091 (404) 449-6090 • National: (800) 334-9267

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INTERSTATE COMMERCE COMMISSION

8-326A013

John F. Ollivier  
Area Manager

October 13, 1988

Ms. Noreta McGee  
Secretary  
Interstate Commerce Commission  
12th Street and Constitution Ave. NW  
Washington, D.C. 20423

No. NOV 21 1988

Date

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ICC Washington, D.C.

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INTERSTATE COMMERCE COMMISSION

Dear Secretary:

Pursuant to our establishing a security interest in certain railroad cars that Whirlpool Leasing Services, Inc. is financing, enclosed are original and two copies of the documents, described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

These documents are a Loan and Security Agreement, Promissory Note and Schedule A #03504-70 to Loan and Security Agreement dated November 15, 1988.

The names and addresses of the parties to the documents are as follows:

Lendor: Whirlpool Leasing Services, Inc.  
17177 North Laurel Park Drive/Suite 233  
Livonia, Michigan 48152

Borrower: Laurinburg and Southern Railroad Company  
240 Railroad St.  
Laurinburg, NC 28352

A description of the equipment covered by the documents is described in the attached Schedule A #03504-70.

A fee of \$13.00 is enclosed. Please return the original and any extra copies not needed by the Commission for the recordation to:

Whirlpool Leasing Services, Inc.  
17177 North Laurel Park Drive/Suite 233  
Livonia, Michigan 48152  
Attention: Jeri Clark

Sincerely,

*John Ollivier*

John Ollivier  
Area Manager



17177 N. Laurel Park Drive, Suite 233, Livonia, MI 48152  
(313) 464-9100

November 23, 1988

**Anthony S. Albanese**  
Vice President, Operations

Ms. Mildred Lee  
Chief Examiner  
Interstate Commerce Commission  
12th Street and Constitution Avenue NW  
Washington D.C. 20423

Dear Ms. Lee:

Pursuant to your conversation with John Ollivier of our Georgia office, I am forwarding an exact, notarized copy of the original documents to be filed in reference to a certain transaction between WLSI, Laurinburg and Southern Railroad Co.

If you have any questions, please feel free to contact me. Our office is located in Michigan.

Sincerely,

  
Anthony S. Albanese

ASA/dlo

Enclosures

LOAN AND SECURITY AGREEMENT  
(EQUIPMENT)

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RECORDED IN NO. 6047 TIME 1988

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INTERSTATE COMMERCE COMMISSION

Loan No. 03504

This Loan and Security Agreement, dated this 15th day of November, 1988 (this "Agreement"), between WHIRLPOOL LEASING SERVICES, INC., a Delaware corporation, whose address is 17177 North Laurel Park Drive, Suite 233, Livonia, Michigan 48152 ("Lender") and Laurinburg and Southern Railroad Company, a North Carolina corporation, whose address is 204 Railroad Street Laurinburg, NC 28352 ("Borrower");

W I T N E S S E T H:

WHEREAS, Borrower desires to borrow monies from Lender to finance the purchase of equipment acquired or to be acquired by it; and

WHEREAS, Lender is willing to lend Borrower such monies in consideration of a security interest in the equipment so acquired and upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of and subject to the terms, conditions and covenants contained herein, Lender and Borrower hereby agree as follows:

I. Definitions:

For purposes of this Agreement, the following terms shall have the following meanings:

"Collateral" shall mean the equipment described in Equipment Schedule A which is Exhibit 1 hereto (the "Equipment") together with such other equipment ("Other Equipment") as may hereafter from time to time be acquired by Borrower and added to this Agreement and described in additional Equipment Schedules which may hereafter be attached to this Agreement, as well as, any modifications thereof or revisions, attachments, or additions thereto and the proceeds and products thereof.

"Indebtedness" shall mean all of the indebtedness of Borrower to Lender outstanding from time to time as evidenced by the promissory note ("Note") as defined below, and such other notes (the "Other Notes") as may be executed by Borrower and delivered to Lender from time to time hereafter to evidence further borrowings by Borrower to acquire Other Equipment, and all other advances,

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I certify that this is an exact copy of an original.

*Carrie J. Thibeau*  
11-23-88  
CARRIE J. THIBEAU  
Notary Public, Wayne County, MI  
My Commission Expires July 2, 1990

commitments to loan, accruals and extensions of credit owing by Borrower to Lender whether now existing or hereafter arising.

"Item(s)" shall mean one or more individual pieces of the Equipment or the Other Equipment.

"Note" shall mean that certain promissory note of even date herewith made by Borrower in favor of Lender, a copy of which is attached hereto and incorporated herein and all subsequent promissory notes executed between Borrower and Lender under this Loan and Security Agreement. The rate of interest, periodic payments and maturity date shall be disclosed in the note(s).

"Original Cost of Equipment" shall mean Borrower's actual cost of acquiring the Equipment or any Other Equipment as set forth in the attached Equipment Schedule relating thereto and which may be supplemented hereafter by the parties.

## II. Agreements:

### Section 1. Commitment and Conditions to Loan.

(a) Lender hereby commits to loan to Borrower and Borrower hereby commits to borrow from Lender the principal amount of \$1,388,459.00 subject to the terms and conditions hereof, and provided that Borrower is not in default hereunder.

(b) The loan contemplated herein shall not be consummated unless and until each of the following conditions precedent are met to the satisfaction of Lender or waived in writing by Lender:

(i) Borrower shall have delivered to Lender the Note, all exhibits required under this Agreement, the opinion letter of counsel required under Section 6 hereof, financing statements, assignments and such other documents and instruments reasonably requested by Lender or Lender's counsel, all duly executed where indicated in form satisfactory to Lender.

(ii) Borrower shall have paid a commitment fee in the amount of  
\$ -0-

(iii) Borrower shall furnish to Lender a certificate of good standing, certified articles of incorporation, certified copies of its Board of Directors authorizing the transaction contemplated hereby;

- (iv) A certificate of a duly authorized officer of non-default hereunder and a certificate of incumbency and authorization of the officers executing this Agreement and the Note.

Section 2. Grant of Security Interest.

Borrower hereby grants to Lender a continuing security interest in the Collateral to secure the payment of the Indebtedness of Borrower to Lender from time to time outstanding (including all renewals, modifications and extension thereof) and to secure Borrower's prompt, full and faithful performance and observance of all of the provisions to be kept, observed or performed by Borrower under this Agreement, the Note, any Other Note, any assignments and any other document or instrument executed by Borrower and delivered to Lender in connection herewith ("the Documents"). The security interest granted hereby shall also cover the proceeds of the Collateral and the proceeds of any hazard insurance and eminent domain or condemnation awards relating thereto.

Section 3. Perfection of Security Interest.

Borrower shall execute and deliver to Lender, concurrently with Borrower's execution of this Agreement, and at any time or times hereafter at the request of Lender (and pay the costs of filing or recording same in all public offices deemed necessary by Lender), all Documents, financing statements, continuation financing statements, assignments, certificates of title, applications for vehicle titles, affidavits, reports and all other documents that Lender may reasonably request, in form satisfactory to Lender, in order to perfect and maintain Lender's security interest in the Collateral.

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Section 4. Warranties and Covenants of Borrower.

Borrower warrants, represents and covenants to Lender and agrees that while any of the Indebtedness remains outstanding and unpaid:

(a) Borrower has accepted delivery of, is in possession of and is the owner of the Collateral, free and clear of all liens, security interests or encumbrances whatsoever, except Lender's security interest;

(b) Borrower will not suffer the Collateral to become subject to any liens, claims, adverse interests or encumbrances (other than Lender's security interest) and will promptly and at its sole expense, take such action as may be necessary to discharge the same;

(c) Borrower will not sell or offer to sell or rent, sell, lend or otherwise transfer or encumber or dispose of the Collateral or any interest therein without prior written consent of Lender, which will not be unreasonably withheld;

(d) Borrower shall at all times, repair and maintain the Collateral at its sole expense so as to keep it in as good condition and repair as when acquired, ordinary wear and tear excepted;

(e) The Collateral will be used continuously by the Borrower and Borrower will not use or permit the use of the Collateral for any unlawful purpose whatsoever;

(f) The Collateral is and will remain during the term of this Agreement "personal property" and will not become real property, fixtures or inventory;

(g) The address of Borrower's principal office is as set forth above and the Collateral shall be located at Borrower's principal office as set forth above or at such other location as its normal business operations require. Borrower shall provide Lender with Collateral's location at any time during the term within a reasonable amount of time from receipt of Lender's written request.

(h) Borrower will not change its name, form of business entity or the address of its principal office without giving written notice thereof to Lender at least ten (10) days prior to the effective date of such change and Borrower agrees that all documents, instruments and agreements demanded by Lender in response to such change shall be prepared, filed and recorded at Borrower's expense prior to the effective date of such change;

(i) Borrower warrants that it has full power and authority to enter into this Agreement and the transactions contemplated hereby and the signatories hereto are duly authorized to bind the Borrower, and Borrower will, upon request of Lender, supply Lender with evidence thereof, and upon execution of this Agreement, the Note and the other documents contemplated herein (the "Documents") such Documents will represent legal, valid and binding obligations of Borrower and shall be enforceable by Lender pursuant to their terms.

(j) The execution and delivery of this Agreement, the Note, any Other Note, the Lease and any other instrument evidencing or securing the Indebtedness of Borrower to Lender will not violate or constitute a breach of Borrower's Articles of Incorporation, By-laws, or any agreement or restriction of any type whatsoever to which Borrower is a party or is subject;

(k) All financial statements and information relating to Borrower and the Collateral, including the Original Cost of Equipment, delivered or to be delivered by Borrower to Lender, are and will be true and correct in all material respects and prepared in accordance with generally accepted accounting principles. There has been no material adverse change in the financial condition of Borrower since the submission of any such financial information to Lender. Borrower will promptly deliver to Lender such of its financial statements and other information as Lender shall reasonably request from time to time during the term of this Agreement;

(l) Borrower is duly qualified and in good standing in its state of incorporation.

(m) There are no actions or proceedings which are threatened or pending against Borrower which might result in any material adverse change in Borrower's financial condition or operation or which might materially and adversely affect any of Borrower's assets;

(n) Borrower has duly filed all federal, state and other governmental tax returns which Borrower is required by law to file and will continue to file the same during such time as any of the Indebtedness remains outstanding and unpaid, and all such taxes required to be paid have been paid in full and Borrower will continue to timely pay the same;

(o) Borrower is now and shall be at all times hereafter solvent and able to pay its debts as they mature.

## Section 5. Opinion Letter.

Borrower shall furnish to Lender an opinion letter from Borrower's counsel in form satisfactory to Lender confirming the warranties contained in Section 5(a)(1)(j)(1) and (m) and to the effect that the Loan has been duly executed and is binding upon the parties thereto pursuant to its terms. Such opinion letter shall be dated as of the date hereof.

## Section 6. Insurance, Taxes, Etc.

Borrower shall (a) pay or cause to be paid promptly when due all taxes, levies, assessments, judgments and charges of any kind upon or relating to the Collateral, to Borrower's business and to Borrower's ownership or use of any of its assets, income or gross receipts, (b) at its own expense to keep and maintain all of the Collateral fully insured against loss or damage by fire, theft, explosion and other risks in such amounts, with such companies, under such policies and in such form as shall be satisfactory to Lender, which policies shall expressly provide that loss thereunder shall be payable to Lender as its interest may appear (and the Lender shall have a security interest in the proceeds of such insurance and may apply any such proceeds which may be received by it toward payment of Borrower's Indebtedness whether or not due in such order of application as Lender may determine), and (c) at its own expense to maintain public liability and property damage insurance in such amounts, with such companies, under such policies and in such form as shall be satisfactory to Lender, and upon Lender's request shall furnish Lender with such policies and evidence of payment of premiums thereon; all policies shall provide for thirty (30) days' minimum written cancellation notice to Lender.

If Borrower, at any time hereafter, shall fail or permit Lessee to fail to obtain or maintain any of the policies required above or pay any premium in whole or in part relating thereto or shall fail to pay any such tax assessment, levy or charge or to discharge any such lien, claim or encumbrance, then Lender without waiving or releasing any obligation or default of Borrower hereunder may at any time thereafter (but shall be under no obligation to do so) make such payment or obtain such discharge or obtain and maintain such policies of insurance and pay such premiums, and take such action with respect thereto as Lender deems advisable. All sums so disbursed by Lender, including reasonable attorney fees, court costs, expenses and other charges relating thereto shall be deemed to be part of Borrower's Indebtedness, to bear interest at the default rate provided in the Note, to be secured hereby, and to be payable upon demand.

## Section 7. Inspection.

Borrower will permit and facilitate the inspection of the Collateral and Borrower's records pertaining thereto at any time and from time to time by Lender or its designated representatives, during normal business hours and upon reasonable notice from Lender.

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Section 8. Indemnification and Expenses.

Borrower agrees to indemnify Lender and hold Lender harmless from and against any and all loss, liability or expense of any kind or nature incurred by or asserted against Lender, except resulting from Lender's actions or omissions, arising out of the manufacture, purchase, acceptance or rejection, ownership, delivery, use, condition, sale, return or other disposition of the Collateral or any Item. This section is effective immediately upon execution hereof even though one or more Items may not yet be accepted by and in the possession of Borrower.

Section 9. Default.

The occurrence of any of the following events shall constitute a Default (as such term is used herein):

(a) upon 5 days after written notice from Lender, the nonpayment of any amount payable on the Indebtedness or any extension, modification or renewal thereof, or the failure to perform any agreement of the Borrower contained herein or in any other instrument relating hereto;

PLEASE  
INITIAL

(b) any statement, representation or warranty of the Borrower herein or in any other writing at any time furnished by the Borrower to Lender is untrue in any material respect as of the date made;

(c) any Obligor (which term as used herein, shall mean the Borrower and each other party primarily or secondarily liable on any portion of the Indebtedness) becomes insolvent or unable to pay debts as they mature or makes an assignment for the benefit of creditors, conveys any assets to a trustee for the benefit of Obligor's creditors, conveys substantially all of its assets; or any proceeding is instituted by any Obligor alleging that such Obligor is insolvent or unable to pay debts as they mature or a petition of any kind is filed under the Federal Bankruptcy Act by such Obligor or any proceeding is instituted against any Obligor alleging that such Obligor is insolvent or unable to pay debts as they mature or a petition of any kind is filed under the Federal Bankruptcy Act against such Obligor except if such proceeding is dismissed within 30 days.

(d) entry of any judgment against any Obligor or order of attachment, execution, sequestration or other order in the nature of a writ is levied on the Collateral;

(e) dissolution, merger or consolidation or transfer of a substantial part of the property of any Obligor;

(f) Borrower's failure to pay the full amount of any tax fee or assessment due and owing to any federal, state or local governmental authority.

Whenever a Default shall exist, and subject to provisions in Rider A attached hereto, the Note and all other Indebtedness may (notwithstanding any provisions thereof), at the option of Lender, and without demand or notice of any kind, be declared due and payable and thereupon immediately shall become due and payable without presentment or demand or any notice to Borrower or any other person obligated thereon and Lender shall have and may exercise with reference to the Collateral and Indebtedness any and all of the rights and remedies of a secured party under the Uniform Commercial Code as adopted and as amended in the State of Michigan, and as otherwise granted herein or under any other applicable law or under any other agreement executed by Borrower, including, without limitation, the right and power to sell, at public or private sale or sales, or otherwise dispose of, lease or utilize the Collateral and any part or parts thereof in any manner authorized or permitted under said Uniform Commercial Code upon default by a debtor, and to apply the proceeds thereof toward payment of any costs and expenses and attorneys' fees and legal expenses thereby incurred by Lender and toward payment of the Indebtedness in such order or manner as Lender may elect. Among the rights of Lender in the event of Default, and without limitation, Lender shall have the right to take possession of the Collateral and to enter upon any premises where same may be situated for such purpose without being deemed guilty of trespass and without liability for damages thereby occasioned, and to take any action deemed necessary or appropriate or desirable by Lender, at its option and in its discretion, to repair, refurbish or otherwise prepare the Collateral for sale, lease or other use or disposition as herein authorized. Borrower agrees in case of Default to assemble at its expense all the Collateral at a convenient place acceptable to Lender and to pay all costs of Lender of collection of the Note and all other Indebtedness and enforcement of rights hereunder, including reasonable attorney fees and legal expenses and including participation in bankruptcy proceedings and expense of locating the Collateral and expenses of any repairs to any realty or other property to which any of the Collateral may be affixed or be a part. If any notification of intended disposition of any of the Collateral is required by law, such notification, if mailed, shall be deemed commercially reasonable and properly given if sent at least seven (7) days before such disposition, postage prepaid, addressed to the Borrower either at the address shown above, or at any other address of the Borrower appearing on the records of Lender.

BORROWER AGREES THAT LENDER SHALL, IN THE EVENT OF ANY DEFAULT HAVE THE RIGHT TO PEACEFULLY RETAKE POSSESSION OF THE COLLATERAL. BORROWER WAIVES ANY RIGHT IT MAY HAVE IN SUCH INSTANCE TO A JUDICIAL HEARING PRIOR TO SUCH RETAKING.

Section 10. General.

- (a) Time shall be deemed of the very essence of this Agreement.

(b) Except as otherwise defined in this Agreement, all terms in this Agreement shall have the meanings provided by the Michigan Uniform Commercial Code.

(c) Lender shall be deemed to have exercised reasonable care in the custody and preservation of any Collateral in its possession if it takes such action for that purpose as Borrower requests in writing, but failure of Lender to comply with any such request shall not of itself be deemed a failure to exercise reasonable care, and failure of Lender to preserve or protect any rights with respect to such Collateral against any prior parties or to do any act with respect to the preservation of such Collateral not so requested by Borrower shall not be deemed a failure to exercise reasonable care in the custody and preservation of such Collateral.

(d) Any delay on the part of Lender in exercising any power, privilege or right hereunder, or under any other instrument executed by Borrower to Lender in connection herewith shall not operate as a waiver thereof and no single or partial exercise thereof or the exercise of any other power, privilege or right shall preclude other or further exercise thereof or the exercise of any other power, privilege or right.

(e) The waiver by Lender of any default by Borrower shall not be effective unless in writing and shall not constitute a waiver of any subsequent defaults, but shall be restricted to the default so waived.

(f) If any part of this Agreement shall be contrary to any law which Lender might seek to apply or enforce or should otherwise be defective, the other provisions of this Agreement shall not be affected thereby, but shall continue in full force and effect.

(g) All rights, remedies and powers of Lender hereunder are irrevocable and cumulative and not alternative or exclusive and shall be in addition to all rights, remedies and powers given hereunder or in or by any other instruments or by the Michigan Uniform Commercial Code or any laws now existing or hereafter enacted.

(h) This Agreement has been delivered in Michigan and shall be construed in accordance with the laws of the State of Michigan.

(i) The rights and privileges of Lender hereunder shall inure to the benefit of its successors and assigns and this Agreement shall be binding on all heirs, executors, administrators, assigns and successors of Borrower.

(j) This Agreement may be assigned by the Lender without notice to Borrower and without the assumption of any obligation by the assignee, and any subsequent assignee shall be deemed to be the Lender for all purposes hereunder.

LSA/C

(k) The terms of this Agreement shall not be amended, modified or waived except by written instrument signed by the parties hereto.

(l) Borrower shall pay all costs and expenses associated with this transaction including but not limited to filing fees and attorney fees incurred in the preparation and closing of this transaction.

Other Terms: \_\_\_\_\_

IN WITNESS WHEREOF, this Loan and Security Agreement has been executed on the day and date first above written.

"BORROWER"

Laurinburg and Southern Railroad Company  
a North Carolina corporation

WITNESSED BY:

/ Brian H. Hest  
/ Pauline Cavender

By: / [Signature]  
Its: / President

"LENDER"

Whirlpool Leasing Services, Inc.

By: / John Ollivier  
Its: / Area Manager